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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

20 Cr. 411 (RA)

6 HESHL ABRAHAM,

7 Defendant.

Sentence

8 -----x
9 New York, N.Y.
October 9, 2024
11:05 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 JILAN J. KAMAL

Assistant United States Attorney

18 STEVEN Y. YUROWITZ

19 Attorney for Defendant

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MS. KAMAL: Good morning, your Honor.

5 Jilan Kamal, on behalf of the United States.

6 THE COURT: Good morning.

7 MR. YUROWITZ: Good afternoon, your Honor.

8 Steven Yurowitz for Heshl Abraham, who's to my right.

9 THE COURT: Good morning to you as well.

10 So in connection with today's proceeding, I have
11 reviewed the following submissions:

12 The presentence investigation report, Mr. Heshl's --
13 excuse me, Mr. Abraham's sentencing memorandum dated June 14th,
14 with accompanying exhibits; the government's sentencing
15 memorandum dated June 24th, and its supplemental letter of
16 September 16th, and the victim impact statement.

17 I also understand that we have an amended consent
18 order of forfeiture is that correct?

19 MS. KAMAL: That's correct, your Honor.

20 THE COURT: Is there anything else? Am I missing
21 anything? Anything I haven't mentioned?

22 MS. KAMAL: Not from the government.

23 MR. YUROWITZ: Your Honor, there's a letter that we
24 submitted on June 24th replying to the government's sentencing
25 submission. And there's the video that we submitted, which I

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1 hope your Honor has had an opportunity --

2 THE COURT: I have not seen either of those. I'm
3 sorry, I did not see the -- I'm happy to take a break now and
4 review it, of course. Was the June 24th letter addressing the
5 issue with respect to intended loss?

6 MR. YUROWITZ: No, this was addressing the
7 government -- statements made in the government's sentencing
8 memo.

9 THE COURT: I'm sorry. My apologies.

10 I will have them printed right now.

11 And we can put the video on. How long is the video?

12 MR. YUROWITZ: It's about six minutes.

13 THE COURT: Okay.

14 MR. YUROWITZ: I have a link for it.

15 THE COURT: Okay.

16 MR. YUROWITZ: Your Honor, given the sensitive nature
17 of it, I would just ask if your Honor maybe could review it in
18 chambers.

19 THE COURT: Sure. I'm happy to take a break now. And
20 I apologize, I'm not sure why I didn't see that.

21 Okay. So why don't we take a ten-minute break. I
22 will review it.

23 Just hold on one second.

24 I'm just going to look at the video in the robing
25 room, as well as the letter.

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1 MR. YUROWITZ: Thank you, your Honor.

2 (Recess)

3 THE COURT: You can be seated.

4 So I have now reviewed the video and your letter. I'm
5 not going to put the video on the docket because it contains
6 some very personal information about the defendant's children.
7 But your letter should go on the docket; like you should always
8 be filing things on the docket. We didn't see it on the
9 docket, but I have it now. I've read it. I'm going to put it
10 on the docket.

11 MR. YUROWITZ: I apologize, your Honor. I thought I
12 had filed it, but --

13 THE COURT: No, it's fine. Let's just move forward
14 from here. But that's just why I missed it and I apologize for
15 that.

16 So I have all of that, thank you.

17 Why don't we begin by discussing the presentence
18 report, which was prepared by the probation department.

19 Mr. Yurowitz, have you reviewed the presentence report
20 and discussed it with your client?

21 MR. YUROWITZ: Yes, your Honor.

22 THE COURT: And Mr. Abraham, have you had enough time
23 and opportunity to review the presentence report?

24 Yes. You have to speak into the microphone and speak
25 so I can hear you. Thank you.

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Thank you.

3 Now, Mr. Yurowitz, I know you made a few objections to
4 the presentence report to the probation department. Are there
5 any that you want to raise with me at this point in time?

6 MR. YUROWITZ: Your Honor, the only one, I would say
7 minor clarification, is there's a statement in paragraph 34
8 that's attributed to Heshl. In the government's own sentencing
9 submission on page 6, they make clear that that line was
10 actually said by Zishe. I don't think it's going to affect the
11 sentence, but just for keeping things straight, I think it may
12 warrant correction.

13 THE COURT: It's the last sentence in paragraph 34
14 that says "In response, Heshl Abraham," is it that, sent a
15 link, or is it earlier --

16 MR. YUROWITZ: Let me just --

17 THE COURT: Sure.

18 MR. YUROWITZ: It's the sentence "This is how I know,
19 because they link both of my vendor accounts." That was not --

20 THE COURT: Yeah. That's the sentence I -- it starts
21 with: "In response, Heshl Abraham sent a link to a VPS company
22 and texted VPS company I use now. This is how I know, because
23 they linked both of my vendor accounts."

24 MR. YUROWITZ: Yes.

25 THE COURT: Okay.

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1 Does the government agree that that, in fact, was not
2 Heshl Abraham who said that?

3 MS. KAMAL: What has happened here, your Honor, in
4 paragraph 34 is that there's been a conflation of statements
5 by -- in the WhatsApp text by Defendant Zishe Abraham and Heshl
6 Abraham. So, for instance, as reflected in the government's
7 sentencing submission on page 6, Heshl Abraham does send the
8 link to a VPS company and says "VPS company I use now." But
9 the response is from Zishe Abraham, who says this is -- "This I
10 know because they linked both of my vendor accounts."

11 THE COURT: Okay. So I'm going to add in the words
12 "after and texted VPS company I use now." I'm going to then
13 add the words "to which Zishe Abraham responded," and then
14 include the next -- the quote, "This is how I know."

15 Is everyone comfortable with that?

16 MR. YUROWITZ: Yes.

17 MS. KAMAL: Yes, your Honor.

18 THE COURT: Okay. All right.

19 MR. YUROWITZ: The only other thing that I would just
20 point out -- I think it's reflected in the footnote -- is, you
21 know, I think the whole conversation was taken out of context
22 because, as the government -- as I wrote in my June 24th
23 submission, it was very clear that with respect to the Amazon
24 accounts, he was using a static IP address. But, like I say, I
25 don't think this is something to get bogged down on; it's in

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1 the footnote.

2 THE COURT: Okay. It's in the footnote. I've read
3 the footnote.

4 All right. But there are no other objections. Thank
5 you.

6 Does the government have any objections to the
7 presentence report?

8 MS. KAMAL: No, your Honor.

9 THE COURT: The Court adopts the factual findings in
10 the report. The presentence report will be made part of the
11 record in this matter and placed under seal. If an appeal is
12 taken, counsel on appeal may have access to the sealed report
13 without further application to the Court.

14 Mr. Abraham, when you pled guilty, the federal
15 sentencing guidelines were discussed. Do you remember that?

16 THE DEFENDANT: Yes.

17 THE COURT: The guidelines — and for those of you that
18 are here and may not know — they are contained in a book that
19 looks like this. There are a set of rules that are published
20 by the United States Sentencing Commission. They are designed
21 to guide judges when they impose sentence. At one time they
22 were mandatory, meaning judges were required to follow the
23 guidelines. They are no longer mandatory. But nonetheless,
24 the judges must properly calculate the guidelines and consider
25 them in determining an appropriate sentence.

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1 So I understand that consistent with the plea
2 agreement, the parties agree that the guidelines range here, as
3 calculated under the November 2023 manual, is 30 to 37 months.
4 The government has nonetheless conducted its own independent
5 calculation of the guidelines, which I'm obligated to do. And
6 among other things, what I did is I did analyze intended loss,
7 relying on Government Exhibit 4.

8 But, in any event, the offense level and the
9 guidelines range is the same. So I just want to make sure we
10 all agree that Mr. Abraham's offense level is 19, his criminal
11 history category is I, and his recommended guideline sentence
12 is 30 to 37 months. Are we all in agreement about that?

13 MS. KAMAL: Yes, your Honor.

14 MR. YUROWITZ: Yes, your Honor.

15 THE COURT: Okay. Thank you. All right.

16 That being said, as I said a moment ago, that range is
17 only advisory. So courts can impose a sentence outside of that
18 range based on one of two legal concepts: A departure or a
19 variance. A departure allows for a sentence outside of the
20 advisory range based on some provision in the guidelines
21 themselves.

22 In the plea agreement, both parties agree that no
23 departure from the guidelines range was warranted.
24 Nevertheless, I've considered whether there is an appropriate
25 basis for a departure from the advisory range. And while

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1 recognizing that I have authority to depart, I don't find any
2 grounds warranting a departure.

3 I do though, of course, also have the power to impose
4 a nonguideline sentence based on what we call a variance
5 pursuant to the factors set forth in 18 United States Code,
6 Section 3553(a). And I know that that's what Mr. Abraham is
7 seeking.

8 So I'd like to hear from the government first. Would
9 the government like to be heard with respect to sentencing?

10 MS. KAMAL: Yes, your Honor, very briefly.

11 Look, the Court is very familiar with the conduct in
12 this case and with the conduct of the defendants.

13 What I can say about the conduct here of Mr. Heshl
14 Abraham in particular is that he engaged -- he engaged in
15 overshipping for a long period of time, from at least mid 2017
16 through the fall of 2018, and as reflected in Exhibit 6, which
17 details the product substitution that the defendant engaged in
18 as well.

19 This is egregious, your Honor. This isn't a momentary
20 lapse. The defendant was routinely agreeing to pay -- to sell
21 Amazon expensive designer perfumes and sending them bits of
22 plastic, like a plastic beard trimmer, in exchange.

23 So I think with respect to the defendant's arguments
24 that his conduct was a momentary lapse, that it wasn't his
25 intent to defraud, that he thought overshipping was fine and

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1 the like, I really don't think the Court should credit those
2 arguments.

3 That said, relative to his co-defendants, Mr. Heshl
4 Abraham did not attempt to defraud Amazon to the same extent as
5 obviously the lead defendant here, Yoel Abraham, or his other
6 co-defendant, Zishe Abraham.

7 I would also note here --

8 THE COURT: When you say that, what do you mean by
9 that? I mean, there were group texts in which he discussed how
10 to evade detection by Amazon and reactivate suspended accounts.
11 So tell me exactly what conduct he didn't engage in and his
12 co-defendants did.

13 MS. KAMAL: That he did not?

14 THE COURT: That's what I heard your point to be.

15 MS. KAMAL: What I'm looking at, your Honor, when I
16 make that argument really is the intended loss. And so with
17 respect to the intended loss here, and to the extent that that
18 is meant to capture the defendants' intent, right, their intent
19 to defraud, the damage he did was more modest compared to, say,
20 Yoel Abraham or Zishe Abraham.

21 That said, the texts, as the Court appropriately
22 notes, speak for themselves. The defendant was constantly
23 looking for a new angle, a new way to make more automatic and
24 systemize the fraud and to try to extract as much money as
25 possible from Abraham -- from Amazon.

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1 The government would also submit that the defendant's
2 claims that -- look, to the extent that the defendant
3 engages -- and I'm turning now to 3553(a) factors. To the
4 extent that the defendant engaged in charitable work and
5 charitable concerns, excellent, wonderful, right. As the Court
6 is well aware, just because the defendant has committed a
7 crime, it doesn't mean that he's a bad person or that he's
8 incapable of good works. It's wonderful to see someone who
9 does have those impulses and acts on them.

10 But as the text messages also reflect, your Honor, the
11 defendant clearly discussed how to shield assets through a
12 charitable trust. I think that's reflected in the text
13 messages where he says he's looking for an aggressive lawyer
14 who knows all the cons on how to get around – frankly, the use
15 of one's own money, notwithstanding the fact that it's been
16 shielded from taxation in a charitable trust.

17 So all told, your Honor, the defendant here does
18 warrant an incarceratory sentence. I will note that the
19 defendant's personal circumstances, the circumstances of his
20 family, they are important. They warrant consideration, and
21 the government is not suggesting that they aren't significant.

22 That said, the defendant is part of a large family, a
23 close-knit community. And as evidenced by the fact that he is
24 constantly assisting others by his own accounts, which the
25 government has no reason to doubt, the Court and the government

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would reasonably expect that during the time of his incarceration, the defendant could rely on the help of his family and his community to support his family during that time. And as reflected in the submissions made to the Court by medical experts or school experts, his family and his children are getting that support that they seem to need already now through the help of the school and other ancillary support providers.

So unless the Court has particular questions --

THE COURT: I just want to just follow up on one point. Just with respect to relative culpability, so I'm aware of the fact that his intended loss figure is lower and his guidelines range is lower as a result as well.

MS. KAMAL: Yes.

THE COURT: But in terms of relative culpability, where do you see him *vis-à-vis* his brothers?

MS. KAMAL: It's a difficult -- it's difficult to slice and dice, your Honor.

On the one hand, the evidence of the defendant's intent and the lengths that he was willing to go and consider going to, as reflected in the WhatsApp texts, are egregious. They are worse than his co-defendants, Zishe Abraham who professed --

THE COURT: He at least professed a desire --

MS. KAMAL: Desire to move on.

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1 THE COURT: -- to get out of the fraud business,
2 right?

3 MS. KAMAL: Exactly.

4 Whereas this defendant looked to be trying to entrench
5 it, to continue it, to get overseas workers recruited into it.
6 And so I agree, your Honor, it's very hard to slice and dice
7 with respect to relative culpability.

8 I think in terms of the defendant's mindset here, I
9 think his -- I think he was more committed to the fraud; he was
10 perhaps more careful, simply, in the way he carried it out in
11 order to avoid detection and that's why the intended loss
12 numbers are lower. But across a range of factors, I would have
13 to say that he is -- that he is in the range of his
14 co-defendant Zishe Abraham.

15 THE COURT: All right. Thank you.

16 All right. Mr. Yurowitz, would you like to be heard?

17 MR. YUROWITZ: Thank you, your Honor.

18 Your Honor has obviously read the submissions and I
19 know has now reviewed the video.

20 THE COURT: Actually, I want to start with a question
21 about one of the -- so your June 24th submission, you say that
22 it's highly telling that Heshl's contemporaneous statements
23 reflected his belief that he was not committing a crime when he
24 engaged in overshipping. Why? What's wrong with overshipping?
25 Did he think that there was nothing wrong with shipping an

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1 amount totally inconsistent with what was expected by Amazon?

2 MR. YUROWITZ: I think, your Honor, the fact that --
3 because from his perspective, I think he saw it as a widespread
4 practice.

5 THE COURT: As a widespread practice?

6 MR. YUROWITZ: Among not just --

7 THE COURT: But clearly was among him and his
8 brothers, right?

9 MR. YUROWITZ: It was him and his brothers, but I
10 think from his perspective, he saw a lot of other people doing
11 it. I think it's reflected in the texts as well. And I think
12 they certainly rationalize it in their own mind that, you know,
13 Amazon was getting goods in return.

14 At the same time, he's quick to admit that, you know,
15 the conduct that he did certainly with the product
16 substitution, he has no defense to that. He doesn't try to
17 defend that. He admits now that it's theft, and he's
18 embarrassed by that, and he's accepted responsibility for that.

19 He's pled guilty to the whole scheme. But I think in
20 his own mind, I think they rationalized at least the
21 overshipping as not as egregious. And I think that's what was
22 reflected really in the statement, you know, when he asked --
23 you know, this was his private communications. And the fact
24 that he said what's wrong with overshipping, I think it kind of
25 reflected that mindset that it was a widespread practice and,

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1 you know, after all, we're giving them something and we're
2 getting back. He now recognizes that all of this was a
3 problem.

4 THE COURT: All right. You may proceed. Thank you.

5 MR. YUROWITZ: So with respect to the -- as I just
6 indicated, with respect to the conduct, neither myself nor
7 Mr. Abraham is going to try to defend or minimize this conduct.
8 As he wrote to probation, any way you slice it, this was theft.

9 I would say, however, that there are several
10 mitigating factors here in terms of the underlying conduct and
11 the relative culpability.

12 First, as the government noticed, from all the
13 brothers, the damage caused by Heshl was the least of all the
14 brothers. By my math, the intended loss for Heshl was more
15 than 31 percent lower than Zishe, the brother that comes next
16 in line; and was 88 percent lower than Yoel, the brother on
17 top.

18 Second – and this I do disagree with the government –
19 from all the brothers, Heshl's conduct was the shortest of
20 duration. He was last -- he was from the last to start. I
21 think him and his brother Zishe, it looked, by my account,
22 based on the new spreadsheet, started the conduct last. And
23 his conduct ended. It was not, as the government claims, a
24 scheme that started from mid 2017. By my review of the
25 spreadsheet, it started -- there was a single instance in

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1 November, then a single instance in December, and then it
2 started with more -- greater frequency in January. And his was
3 the last to stop from any defendant. It stopped in August of
4 2018.

5 And just on that point for a second, your Honor, you
6 know, the government now submitted in response to your Honor's
7 order a revised spreadsheet. And I think Ms. Kamal would kind
8 of confirm this. I had pointed out for a while that the
9 spreadsheets initially as to Heshl did not have all his
10 numbers. And, you know, we had the subpoena, and Amazon came
11 back and said that they produced everything.

12 It was only when it came to Yoel's sentencing that now
13 they produced a new spreadsheet, and that new spreadsheet had
14 all of Heshl's numbers. And the result of that was your Honor
15 was handed today an amended forfeiture order which, to commend
16 Ms. Kamal, she lowered the forfeiture number by over \$400,000
17 based on those new numbers. So I think that -- but even with
18 now having the full numbers, Heshl's guidelines still remain
19 the same.

20 And third, the third point I would make is -- and I
21 say this advisedly. The government says that the crime was
22 committed out of greed. When it comes to Heshl, I don't think
23 it's an accurate statement. By any measure, Heshl did not live
24 a high lifestyle. And as we showed in our sentencing memo,
25 most of the profits he made from the scheme were given away to

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1 charity. I want to make clear, we don't say that in any way to
2 justify or defend his conduct. It's just for the small point
3 of saying that I don't think it's motivated by greed. And I
4 think that also may explain why Heshl was -- had the lowest
5 loss number and the duration of his involvement was the
6 shortest.

7 And I guess the final point that I would make with
8 respect to the underlying conduct is the text messages.

9 There's been a lot of discussion about them, even today, by the
10 prior sentencing. And I certainly get they are not pretty.

11 What I would say is as to Heshl, there are a number of
12 statements that were misattributed to him, even as I pointed
13 out in the June letter, there were text messages that were
14 attributed to him as saying when he was passing on a voice
15 note. I think when people use these messaging systems, they
16 kind of lose themselves and they don't -- they give no thought
17 to what they say. For that reason, I deleted WhatsApp years
18 ago. Because people -- I don't think people -- if you would
19 ask him about some of the statements that he made, he probably
20 doesn't even remember. They are just said without thought.

21 The point is I don't think it's accurate to say that
22 he ever contemplated doing many of those things. And I think
23 the facts show that. So like I said, they are not pretty, but
24 I don't think they have, you know, the same -- this is not --
25 they were not said with the intention that -- I think they were

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1 just, you know, a bunch of brothers talking and not thinking of
2 what they were saying.

3 So to summarize, when it comes to the offense conduct,
4 in terms of culpability, Heshl's conduct is on the bottom of
5 the totem pole. But I recognize being on the totem pole at all
6 is a problem and Heshl recognized that.

7 But 3553(a) requires a court to take into account more
8 than just the offense conduct, and to look at the defendant as
9 a whole. In that regard, I think Heshl has a number of
10 extremely positive things to say.

11 First, his work for Chesed 24/7. I could say from
12 personal experience being part of the sandwich generation,
13 having elderly parents that, unfortunately, have to go to the
14 hospital and in-laws and things like that, I've spent more time
15 in the hospital than I would care for.

16 And I had a recent experience. We had to rush to the
17 hospital. It was a Saturday morning. It was the Sabbath. You
18 can't take food. We came at 6 o'clock in the morning, no
19 communication. And Chesed 24/7 had a roomful of food,
20 everything that we needed, anything that we could have asked
21 for. And what really blew my mind was after the Sabbath, two
22 hours later, I went up to the room and there was fresh food
23 there. And, you know, that's the type of work that they are
24 doing, and that's the type of work that Heshl is doing on
25 behalf of this organization. It's really a wonderful

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1 organization.

2 And then just in terms of his business, dozens of
3 people reached out to me how Heshl helped them in the business.
4 They were quite surprised to hear that Heshl was involved in
5 illegality. The sentiment they expressed to me was Heshl, the
6 advice he always offered them was to be aboveboard; and they
7 emphasized to me that since his arrest, when people reach out
8 to them, he emphasizes to them how it's important to stay on
9 the straight and narrow path.

10 And, you know, it's an empty courtroom here. We could
11 have filled up the courtroom with a lot of people. All these
12 people would have come, but, you know, there's an aspect of the
13 sentencing that's very private, as your Honor indicated. And,
14 you know, for that reason, we ask people to respect Heshl's
15 privacy, you know, to not be here.

16 But these people -- there are people -- the acts that
17 he did is far more than charity, giving someone a handout.
18 Propping them up, setting them up in a business is -- and
19 allowing them to earn a livelihood and be self-sufficient, some
20 of these people, you know, they are all in the same business,
21 they are competitors with him. I think it speaks volumes of
22 who Heshl is as a person.

23 So as I indicated, I ask people not to come because I
24 want to get to kind of the core of the presentation, which is
25 the family circumstances.

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1 I've represented many defendants. I don't think I've
2 met a defendant yet who would say that, oh, his family will be
3 able to manage sufficiently while he's in prison. I'm sure
4 your Honor hears that often. But I think when it comes to
5 Heshl's situation, it's a different category. We're talking
6 about --

7 THE COURT: Let me just -- I have tremendous sympathy
8 for people with families and the harm that will be caused their
9 family by their absence. But he engaged in this conduct
10 knowing that he had a family, right, and knowing that what he
11 was doing was illegal. So, I mean, I'm absolutely going to
12 consider those issues, but at the end of the day, this was his
13 choice.

14 And then, you know, also to the government's point, he
15 does, thankfully, have many extended family members. I don't
16 mean to say it will be easy by any means and I don't want to
17 sound unsympathetic, because I feel a tremendous amount of
18 sympathy. But I also have to balance those concerns with,
19 among other things, the need for deterrence, the need not only
20 to deter Mr. Abraham from engaging in conduct like this, but to
21 send a message that you engage in this conduct, that, you know,
22 you do willingly and knowingly and, in some instances, looking
23 at the texts, almost gleefully that there will be real
24 consequences and not just staying in your house for a certain
25 amount of time. So it's just about balancing those concerns.

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1 MR. YUROWITZ: I recognize that. I appreciate that,
2 your Honor. And I'm going to try to address some of your
3 Honor's statements.

4 THE COURT: Of course.

5 MR. YUROWITZ: Heshl recognizes, you know, this was
6 his problem; he created it. And he has to suffer the
7 consequences.

8 At the same time, I think that we're dealing with a
9 situation that is not -- that is certainly atypical. You know,
10 my wife is a schoolteacher, I have several daughters. And one
11 of the things that I realized is you could keep a lot of
12 secrets from a lot of people; you can't keep it from the
13 teachers. The kids just -- especially younger kids, they'll
14 say things and you just observe the interactions that they
15 have.

16 THE COURT: It's really sad but, you know, that video
17 also shows that there are a lot of people who really care about
18 and are dedicated to helping his children, right?

19 MR. YUROWITZ: Yes, your Honor.

20 And I think what then -- your Honor, I had -- one of
21 the people who wrote a letter, who is on the video and actually
22 was going to come today, was Hindi Roth, one of the therapists.
23 And she's actually available by phone, if your Honor would
24 like. She told me, she said, given the time of year with the
25 Jewish holidays, it's just -- she can't just come in.

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1 But what she updated me was she's now -- and when she
2 wrote the letter at the time of the video, she was seeing one
3 of the children. She now sees three of the children for three
4 hours every Sunday, every week. And she didn't mince words
5 with me. She said just Mrs. Abraham is not capable of managing
6 on her own. She says she -- she's there for three children,
7 but she's really giving therapy to five children and
8 Mrs. Abraham, who herself has a therapist who I've spoken to
9 and I'll get to.

10 But the point is, yes, there is -- there is therapy
11 now, there is support. But that's just keeping them kind of,
12 you know, the head above water. It's not by any means -- and
13 yes, the community -- a community will step in to help, but
14 there's not someone in the community to come there and sleep
15 there every night. You know, it's not something that's
16 capable. And this is not a situation where the grandparents
17 could come in. Part of it is I spoke to Mrs. Abraham's
18 therapist last night, I had a lengthy conversation with him.
19 That's part of the problem, why she suffers from some of the
20 issues that they have.

21 So I know, yes, this is a problem of Heshl's own
22 making. But what I would tell you -- what I would say to you,
23 your Honor, you know, there are six children here who are
24 completely innocent. And your Honor heard from Ms. Lifetag,
25 Ms. Roth, Ms. Ganz, you know, from the school administrator,

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1 from the rabbi. I think they all have one voice. This is not
2 a situation where this mother can manage on her own.

3 And I appreciate the fact that we have to send a
4 message and specific deterrence, that's why I cited from the
5 Sentencing Commission.

6 A lengthy sentence of home confinement is by no means
7 a walk in the Park. I've had clients. I know that there are
8 clients that literally, they can't deal with it; they go stir
9 crazy from it. Sentencing Commission, we quoted it, some
10 people think it's worse than prison. Here, it's a necessary --
11 you know, it's needed because there's a family that, as one of
12 the therapists said, a sentence of imprisonment would be a
13 death sentence of a family here.

14 So yes, deterrence is necessary. And I think that any
15 sentence that has home confinement and given the financial
16 penalties that he's facing, the family -- I've heard this from
17 a number of members in the committee, they are not making ends
18 meet; people are stepping in to try to help. But they are not
19 in a situation to really run the family, which is -- I think
20 every therapist and all the school administrators are one
21 voice. The only reason the family is where it is today, now,
22 which is, like I say, keeping their head above water, is
23 because of Heshl's presence.

24 So I would just ask your Honor to take all these
25 factors into account and fashion a sentence that is not greater

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1 than necessary to satisfy the goals contained in 3553(a). A
2 sentence with a serious component of home confinement, we
3 submit, will satisfy those goals and have the salutary effect
4 of preserving Mr. Abraham's family. Thank you.

5 THE COURT: All right. Thank you.

6 Mr. Abraham, is there anything you'd like to say
7 today? Just bring the microphone a little closer, sir, so I
8 can hear you.

9 THE DEFENDANT: Your Honor, I stand before you today
10 with profound regret and remorse. I understand the devastation
11 I caused.

12 THE COURT: I'm sorry, sir. If you can just speak a
13 little bit louder. It's just difficult to hear with the high
14 ceilings. Thank you so much.

15 THE DEFENDANT: I understand the devastation I caused
16 and I take full responsibility for what I did. I'm truly sorry
17 for the loss and harm I inflicted on Amazon. I learn from my
18 mistakes and commit to rebuilding my life in a positive way.

19 I respectfully ask for your mercy and opportunity to
20 prove myself moving forward. Thank you, your Honor.

21 THE COURT: Thank you.

22 Is there any reason why sentence cannot be imposed at
23 this time?

24 MR. YUROWITZ: No, your Honor.

25 MS. KAMAL: No, your Honor.

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1 THE COURT: So I'm required to consider the advisory
2 guidelines range of 30 to 37 months, as well as various other
3 factors that are outlined in a provision of the federal law –
4 it's 18 United States Code, Section 3553(a) – and I've done so.
5 Those factors include, but are not limited to, the nature and
6 circumstances of the offense and the personal history and
7 characteristics of the defendant, because each defendant must
8 be considered individually as a person.

9 Judges are also required to consider the need for the
10 sentence imposed to reflect the seriousness of the offense,
11 promote respect for the law, provide just punishment for the
12 offense, afford adequate deterrence to criminal conduct,
13 protect the public from future crimes of the defendant, and
14 avoid unwarranted sentencing disparities, among other things.

15 As I've said at the sentencing of both of
16 Mr. Abraham's brothers who thus far have been sentenced, Yoel
17 and Zishe, all four of the brothers participated in an
18 elaborate scheme and a brazen scheme to defraud Amazon. And
19 they intentionally, including, you know, Mr. Abraham, who's
20 here before me today – intentionally and extensively
21 overshipped items on purchase orders, at times in the
22 thousands, causing Amazon to pay for goods that it hadn't
23 ordered; engaged in product substitution, giving Amazon
24 essentially worthless things that it didn't ask for; and, you
25 know, throughout the course of the conspiracy, through group

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1 texts and WhatsApp, he and his co-defendants repeatedly
2 discussed how to evade detection by Amazon and reactivate
3 suspended accounts.

4 And unlike his brother Zishe, he didn't seem to have
5 any problem with this conduct or any kind of remorse until he
6 was caught. And most people are remorseful once they are
7 caught.

8 In terms of his personal history and characteristics,
9 however, Mr. Heshl Abraham, he's 35, he has no other criminal
10 history, there's no history of violence, he's married and he
11 supports and he cares for his six minor children. I have no
12 doubt that his family will suffer emotionally and financially
13 in his absence, and that's a tragedy. But as just noted, it is
14 a tragedy of his own making. It's just often the case that a
15 defendant's family -- that those are the people, as just
16 referred to by counsel, sort of the innocent children, who
17 suffer the most.

18 I read all the letters from his loved ones. I know he
19 shares a close relationship with his wife and children and
20 parents and siblings and extended family. I know he
21 volunteers; he's a productive member of his community. And
22 those are all factors that I am considering today in fashioning
23 an appropriate sentence.

24 So I'm going to consider all of those personal history
25 and characteristics, but also have to ensure that the sentence

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1 reflects the seriousness of the offense and promotes respect
2 for the law, provides just punishment and, I think critically
3 in a case like this, deters not just him, but others from
4 engaging in similar conduct. People are going to see that they
5 are -- in Mr. Abraham's community, but elsewhere in society at
6 large, people will see that there are real serious consequences
7 and painful consequences to engaging in criminal behavior as
8 brazen as this.

9 Ultimately, as a result, I agree with the government
10 and probation that a prison sentence is necessary here, given
11 the egregiousness of the conduct and the importance of
12 deterrence. But I think that the guidelines range is too high.

13 So I've considered all those factors. I have also
14 considered the need to avoid unwarranted sentencing
15 disparities, not only with respect to Mr. Abraham's
16 co-defendants, but other defendants in this district and
17 nationwide.

18 So, Mr. Abraham, could you please rise for the
19 imposition of sentence.

20 It is the judgment of this Court that you be committed
21 to the custody of the Bureau of Prisons for a term of 15
22 months, to be followed by a term of supervised release of three
23 years. I believe that this sentence is sufficient, but not
24 greater than necessary, to comply with the purposes of
25 sentencing set forth in 18 United States Code, Section 3553(a).

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1 And I just want to note that I think this sentence is
2 consistent, if not lower, than other sentences imposed in this
3 district. You know, according to a search that I did on the
4 U.S. Sentencing Commission's publicly available interactive
5 data analyzer, that data indicated that for offenses where
6 2B1.1 is the primary guideline and where the defendant was in a
7 sentencing -- you know, the same sentencing zone and D and
8 criminal history category of I, the average length of
9 imprisonment in this district in 2023 was 28 months, the median
10 was 20 months. And that data comes from 176 separate cases
11 where -- which were reported to the Sentencing Commission. So
12 I think that this sentence, as I noted, is sufficient, but not
13 greater than necessary.

14 You can be seated, sir, if you'd like, while I read
15 the other aspects of your sentence.

16 So with respect to supervised release, as I said,
17 you'll be on supervised release for three years. All the
18 standard conditions of supervised release shall apply. So the
19 standard conditions of supervised release are on pages 31 and
20 32 of the presentence report.

21 Would you like me to read those out loud or do you
22 waive their public reading?

23 MR. YUROWITZ: We waive the public reading.

24 THE COURT: Okay.

25 And with respect to the mandatory conditions, would

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1 you like me to read those out loud or do you waive their public
2 reading?

3 MR. YUROWITZ: We waive them.

4 THE COURT: Okay. Mr. Yurowitz, just make sure that
5 you go over them very carefully. I'm sure the probation
6 officer will as well, but I want to make sure we do that.

7 I am obligated to read the special conditions of
8 supervised release out loud.

9 I'm going to impose all the special conditions
10 recommended by the probation department.

11 Did you want to be heard on one?

12 MR. YUROWITZ: Your Honor, I think, just because I've
13 had this issue several times in the Second Circuit --

14 THE COURT: Sure.

15 MR. YUROWITZ: -- recently, I think your Honor would
16 have to make special findings as to --

17 THE COURT: I would, yeah.

18 MR. YUROWITZ: As to each of the -- I don't know that
19 they are necessary here. Obviously, you know, he should be
20 supervised by the district of residence. But as to the other
21 ones, I don't -- you know, particularly the requirement about
22 opening up additional lines of credit, Mr. Abraham would like
23 to be able to, you know, reestablish himself in business and to
24 be able to pay back the victim really. And just I think the
25 more restrictions that are placed in terms of his ability to

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1 get financing and things like that, I think it just makes it
2 more difficult. And I don't think that it's necessary -- I
3 don't think the other special conditions are necessary. But
4 what I would say is if your Honor is going to impose them, I
5 think special findings are needed.

6 THE COURT: Okay. Thank you.

7 I am going to impose the special conditions, but
8 you're absolutely right that I need to make specific findings.

9 With respect to providing the probation officer access
10 to requested financial information, which is one special
11 condition I'm imposing, and the second, that he must not incur
12 new credit card charges or open additional lines of credit
13 without the approval of the probation officer unless he's in
14 compliance with the installment payment schedule, in light of
15 the fact that this was a financial crime, it involved fraud and
16 efforts to evade the victim in this case, and in light of the
17 significant financial penalties, in particular, the consent
18 order of forfeiture that I intend to sign with a very
19 significant amount of forfeiture, I think that these are
20 appropriate to have the probation officer monitor, you know,
21 Mr. Abraham and ensure that he is, in fact, paying as he must,
22 consistent with the installment payment schedules, and to
23 provide access to requested information.

24 Yes.

25 MR. YUROWITZ: Just for clarification, because -- on

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1 the second condition, so long as he's in compliance with any
2 installment payment schedule that your Honor sets, do I
3 understand that he can -- he doesn't need the permission?

4 THE COURT: You must not incur -- so I'm going to read
5 it out loud. You must not incur new credit card charges or
6 open additional lines of credit without the approval of the
7 probation officer, unless you are in compliance with the
8 installment payment schedule.

9 So if he's in compliance with the installment payment
10 schedule, he does not need to get the approval of the probation
11 officer.

12 MR. YUROWITZ: Thank you.

13 THE COURT: Does the government read that the same way
14 that I do?

15 MS. KAMAL: I do, your Honor.

16 THE COURT: Yeah.

17 So it's really if he's not in compliance with the
18 payment schedule. The providing access to requested financial
19 information, I don't know that the probation office even will
20 ask for some, but if it does, he's got to provide it. And I
21 think that that's appropriate for the reasons I stated.

22 In addition, in light of the nature of the crime, in
23 light of the fraud, in light of the efforts to evade detection,
24 in light of the use of computers to do this, the online aspect
25 of this, I also think that the next special condition proposed

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1 by the probation office is appropriate; that Mr. Abraham shall
2 submit his person and any property, residence, vehicle, papers,
3 computer, other electronic communication, data storage devices,
4 cloud storage or media and effects to a search by any United
5 States Probation Officer and, if needed, with the assistance of
6 law enforcement.

7 The search is to be conducted when there is reasonable
8 suspicion concerning a violation of a condition of supervision
9 or unlawful conduct by the person being supervised – that will
10 be Mr. Abraham. Failure to submit to a search may be grounds
11 for revocation of release. He shall warn any other occupants
12 that the premises may be subject to search pursuant to this
13 condition. Any search shall be conducted at a reasonable time
14 and in a reasonable manner and he will be supervised in the
15 district of his residence.

16 So those are the special conditions of supervised
17 release.

18 I'm not going to impose a fine. I think it would be
19 difficult for Mr. Abraham to pay one, as the probation
20 department noted, particularly in light of, as I said, the
21 forfeiture order that will follow.

22 I'm required to impose the mandatory special
23 assessment or fee of \$100. That must be paid immediately.

24 With respect to restitution, I am ordering
25 restitution, but I'm reserving judgment on the amount. See the

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1 Dolan case, 560 U.S. 605, 608. I'm going to refer the amount
2 of restitution to a magistrate judge for a recommendation.
3 You'll have an opportunity to object to the recommendation of
4 the magistrate judge. Ultimately, I will make the
5 determination as appropriate. So you should see that referral
6 order on the docket later today or tomorrow.

7 And then with respect to forfeiture, I am signing and
8 incorporating into my sentence today and into the judgment the
9 consent preliminary order -- excuse me, the amended -- let me
10 just get it out. I have the wrong one in front of me. The
11 amended consent preliminary order of forfeiture as to specific
12 property and money judgment that I understand was signed today
13 by Mr. Abraham and his counsel, as well as AUSA Kamal.

14 And I'm not going to read the entire order, but I am
15 going to say that a money judgment in the amount of
16 \$1,302,830.95 will be ordered. But as I said, I'm
17 incorporating the entirety of this amended forfeiture order.

18 All right. Does either counsel know of any legal
19 reason why this sentence cannot be imposed?

20 MS. KAMAL: No, your Honor.

21 I would also, however, just at this time like to note
22 for the record that a representative of the victim is here
23 today for the purposes of sentencing. It's my understanding
24 they don't have anything to add, in addition to what they
25 already have in writing in the proceeding. But I did just want

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1 to note that for the record.

2 THE COURT: No, thank you.

3 I saw him here. I'd asked at the last two sentencing
4 if he wanted to speak, and he didn't. But I should have asked
5 you anyway.

6 Sir, would you like to be heard?

7 UNIDENTIFIED SPEAKER: No, your Honor.

8 THE COURT: Okay. Thank you.

9 And I have read the letter on behalf of the victim.

10 MS. KAMAL: Other than that, your Honor, the
11 government sees no reason that sentence cannot be imposed.

12 THE COURT: Thank you.

13 And I'll just note that this sentence is, of course,
14 you know, half of the low end of the guidelines. The probation
15 department here recommended a below-guideline sentence, but I
16 went even lower because I thought it was appropriate to do so
17 in light of the mitigating circumstances.

18 MR. YUROWITZ: Your Honor, as far as any reason why
19 the sentence can't be imposed, no, we have no comment. I would
20 want to be heard in terms of recommendations.

21 THE COURT: Sure. Let me first -- why don't we do
22 this. Yeah, why don't we talk about a surrender date and then
23 any recommendations you have for a facility.

24 MR. YUROWITZ: In terms of recommendation for a
25 facility, I would ask for the Otisville camp.

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1 In terms of the date of surrender --

2 THE COURT: I didn't hear you.

3 MR. YUROWITZ: I would ask for if your Honor could
4 recommend the Otisville camp.

5 THE COURT: I will do so.

6 MR. YUROWITZ: And in terms of date for surrender,
7 maybe the government has a better sense or maybe your Honor,
8 how long it's taking to designate these days; because I would
9 just ask that it be a date that he --

10 THE COURT: Yeah. So just so you know, defendants are
11 no longer sent to the MDC in advance of sentencing. So to the
12 extent that that was a concern of yours, that would not happen.

13 I do expect a designation to be made within the 60-day
14 period. And my understanding is that, as I said, people are
15 not going to MDC, they are being sent directly to the place of
16 designation.

17 MR. YUROWITZ: If I could -- does your Honor know,
18 have they been taking the full 60 days? I think Mr. Abraham's
19 feeling is to the extent that he's going to have to go in, he
20 would like to do it sooner rather than later and get it over
21 with to be back to his family. But I just don't want to ask
22 for a date that it's -- you know, that have to come back to
23 your Honor.

24 THE COURT: No, I understand that.

25 Does the government have any suggestions for how we

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1 can do this?

2 MS. KAMAL: So my understanding, your Honor, is at the
3 moment the designation process and duration is really driven by
4 the surrender date imposed by the Court. I certainly have
5 encountered the situation where the surrender date arrives and
6 it's the day before and the defendant does not know where they
7 are necessarily supposed to go and they hear it the very last
8 minute.

9 I have not heard though yet of surrender dates being
10 missed by a failure to designate. If that, in fact, were the
11 case, as the Court's noted, I mean, the defendant would simply
12 stay out. But I think at this point, as you can probably
13 intuit, the government's open here to a reasonable period for
14 the defendant to prepare and to surrender. So I really think
15 it goes back to defense counsel.

16 THE COURT: Obviously, I assume he wants to be home
17 for Yom Kippur. But, I mean, do you want to choose a date like
18 November 4th, and then maybe I can ask the government just to
19 confirm the week before that, in fact, that, you know, he can
20 be designated, or you can reach out sooner and see if that's a
21 reasonable date for designation and, if not, we can put it off.

22 MR. YUROWITZ: Your Honor, if we could do November
23 4th. And then with the understanding that if it becomes
24 necessary to push it off --

25 THE COURT: Yes.

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1 MR. YUROWITZ: -- we come back to it.

2 THE COURT: Okay.

3 So I'm just going to ask the government and counsel to
4 be in coordination. And if you need my involvement, I'm happy
5 to get involved.

6 MR. YUROWITZ: Thank you, your Honor.

7 MS. KAMAL: Certainly, your Honor.

8 THE COURT: Okay.

9 So, Mr. Abraham, that's the sentence of this Court.

10 You have a right to appeal your conviction and
11 sentence except to whatever extent you may have validly waived
12 that right as part of your plea agreement.

13 If you do choose to appeal, the notice of appeal must
14 be filed within 14 days of the Judgment of Conviction.

15 If you're not able to pay for the costs of an appeal,
16 you may apply for leave to appeal *in forma pauperis*, which
17 simply means that court costs such as filing fees will be
18 waived.

19 If you request, the Clerk of Court will prepare and
20 file a notice of appeal on your behalf.

21 Does the government move to dismiss the underlying
22 indictment?

23 MS. KAMAL: Yes, your Honor.

24 THE COURT: Okay. It will be dismissed.

25 You know, so, Mr. Abraham, as I said to your brothers,

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1 and I often say at sentencing because I so firmly believe this
2 to be true, I don't think people need to be defined by the
3 worst mistakes they've ever made or the worst decisions they've
4 ever made. I don't think you need to be defined by this.

5 You obviously have an incredibly loving family and
6 community who support you. As I said earlier, I read all of
7 those letters that are really a tribute to you. And they
8 described you as, you know, supportive and helpful and selfless
9 and compassionate, among many other things. And I know that
10 there will be a lot more that you define yourself by going
11 forward. And I wish you luck in the future.

12 Are there any other applications at this time?

13 MS. KAMAL: Not from the government.

14 Thank you, your Honor.

15 MR. YUROWITZ: Your Honor, just -- I know that when he
16 was arrested, he posted bail, Mr. Abraham posted bail. I think
17 that money, some of it, was borrowed from others, and I think
18 he's anxious to be able to get that back.

19 THE COURT: Once he surrenders, you should submit a
20 proposed order to me, hopefully on consent; I don't imagine
21 that will be a problem. I'll sign that as soon as I get it.

22 MR. YUROWITZ: Thank you.

23 THE COURT: Thank you. We're adjourned.

24 * * *